

January 27, 1997

Ref: 8EPR-EP

Subject: Involving the Public in Water Quality Standards Development

Dear Tribal Water Quality Program Contact:

The purpose of this letter is to provide guidance to tribal water quality programs on ways to involve the public in the development of an initial set of water quality standards. The water quality standards regulation specifies *minimum* public participation requirements applicable to adoption and subsequent revision of water quality standards. However, because the initial adoption of tribal standards is an especially significant step toward protecting the quality of reservation surface waters, tribal programs may want to go beyond minimum requirements in seeking the public's views and assistance. This letter is intended to provide some ideas on how an appropriate degree of public participation can be achieved. Once an initial set of standards has been adopted, Tribal water quality programs are also encouraged to use the approaches described in this letter in subsequent triennial reviews. Likewise, State water quality standards staff may want to review this guidance prior to initiating triennial reviews in order to develop an effective public participation strategy and ensure that federal public participation requirements are met. Guidance on public participation is also included in Chapter 6 of EPA's *Water Quality Standards Handbook*.

Public participation in water quality standards decision-making is important for a number of reasons. First, Tribal standards need to be supported by the public in order to maximize the level of water quality protection that is achieved. Since the solution to most reservation water quality problems is likely to depend on teamwork and collaborative actions, involving the affected public in the decision-making process is a key to establishing a successful program. By including the public from the outset, the tribal water quality program may be able to achieve long term public support and voluntary participation of citizens in protecting surface waters. Second, achieving broad-based participation of the public will likely lead to a better set of water quality standards. By tapping into data and resources available from various sectors of the public and federal, state, and local governments, Tribes can make well-informed decisions about the appropriate water quality goals for reservation surface waters. Third, seeking the participation of the public may lead to less controversial decisions and reduced potential for litigation. For some who believe they may be affected economically by the tribal standards or who may have a strong interest in ensuring adequate protection of water quality, having a meaningful opportunity to provide input may lead to a greater degree of acceptance of the standards that are ultimately adopted.

In 1995, the Region issued *Supplemental EPA Region VIII Guidance: Water Quality Standards for Indian Tribes*. That document describes a seven step process for developing an initial set of tribal standards (see Figure 1). The recommended fifth step is to refine the

**Figure 1**  
**Recommended WQS Adoption Process**

<b>Preliminary</b>	<b>Monitoring.</b> The Tribe completes one or two years of surface water monitoring to support identification of attainable uses and implementation of standards. Although not required, this preliminary step is recommended.
<b>Step 1 (Month 1)</b>	<b>Decision to Proceed.</b> The Tribe decides to develop water quality standards (WQS) based on their water quality problems, program resources, and environmental priorities. The Tribe's need to qualify for the standards program should be evaluated and compared to its need to qualify for other programs.
<b>Step 2 (Beginning Month 1)</b>	<b>Begin Development of WQS.</b> The Tribe begins to develop draft WQS, working closely with EPA and (ideally) State WQS program contacts. Completion of EPA's WQS Academy training course is highly recommended. Guidance and information provided by EPA, the State's water quality standards, and standards adopted by other Tribes can all be used to develop an initial draft. The Region recommends that Tribes use the standards of an adjacent State as a model.
<b>Step 3 (Beginning Month 5)</b>	<b>Begin Assembling Program Application.</b> The Tribe begins to assemble a program application, including any readily-available information to help EPA evaluate jurisdiction on non-member lands (see Regional guidance). Examples of tribal WQS program applications are available from the Region.
<b>Step 4 (Month 8)</b>	<b>Submit Application to EPA.</b> The Tribe submits its WQS program application to the EPA Regional Administrator. The draft WQS should be included as part of the showing of capability.
<b>Step 5 (Beginning Month 9)</b>	<b>Public Outreach and Involvement.</b> The Tribe continues WQS development and begins to solicit input from interested parties on and off the reservation (e.g., by distributing copies of the draft WQS for comment, by developing a document that explains the rationale for the draft standards, by holding a public meeting to discuss the draft WQS, etc.). Broad input is actively sought to help build understanding and support for the tribal standards.
<b>Step 6 (Month 14)</b>	<b>EPA Approves Program Application.</b> Where the program approval criteria are met, EPA approves the tribal WQS program application consistent with the WQS regulation, after first providing appropriate governmental entities an opportunity to comment on the Tribe's showing of jurisdiction.
<b>Step 7 (Month 18)</b>	<b>Tribe Adopts WQS.</b> The Tribe adopts its WQS after holding a public hearing and submits the WQS to EPA for approval/disapproval. The public participation requirements found at 40 CFR 25 and the WQS submission requirements found at 40 CFR 131.6 need to be addressed.

draft water quality standards by conducting public outreach activities, i.e., explaining the draft standards to the public and requesting comments. This letter will discuss some public outreach approaches and will address the following:

- *Who should be included in the Tribe's water quality standards development process?*
- *How can tribal water quality programs educate interested parties about water quality standards issues?*
- *What are the minimum federal requirements for public participation on water quality standards actions?*
- *What are some of the optional activities that can improve public participation?*
- *What are the recommended procedures for holding a public hearing?*

## **DISCUSSION**

The eight items discussed below concern ways to involve the public in the development of an initial set of tribal water quality standards. With the exception of the last two items, the activities are optional. The Region encourages Tribes to pursue at least some of these optional activities in order to maximize public understanding and support for the tribal water quality standards. A general recommendation is that efforts to organize and conduct public outreach activities should be designed to encourage participation from all segments of the public. In many cases this may be best achieved by providing informal opportunities for the public to learn about, and participate in discussions of, water quality standards issues. The Region believes that in cases where opportunities for public participation are limited to formal settings, the public may be reluctant to participate. Of course, the appropriate approach to encouraging public participation will depend upon the situation on each individual reservation, and each tribal program may decide which, if any, of the optional activities should be pursued.

### **1) Distribute the draft WQS to interested parties for comment.**

Once a complete first draft of tribal water quality standards has been prepared, it may be useful to distribute the draft standards to interested parties for comment. The benefit of seeking **early** input from the public on draft standards is that issues can be identified and resolved by tribal program staff, in a cooperative manner, prior to the public hearing. EPA recommends that draft standards be distributed to interested parties on and off the reservation. For example, the draft standards may need to be sent to those that may be affected by the standards, water quality programs of adjacent States and Tribes, point source dischargers within reservation boundaries and upstream of the reservation, environmental groups, EPA, other tribal, state, or federal agencies, and others that may be interested in the tribal water quality standards. EPA or the water quality program of an adjacent State or Tribe may have information or mailing lists to help the tribal program identify the appropriate parties to receive the draft water quality standards. Compiling and maintaining a mailing list of interested parties will be useful throughout the water quality standards adoption process.

### **2) Distribute a "rationale" document that discusses key issues.**

Along with the actual draft standards, it may be useful to prepare and distribute a document that: (1) summarizes how the standards were developed and (2) provides answers to anticipated questions. Preparation of such a "rationale" document is strongly recommended by the Region to educate and build public confidence in the draft standards. The rationale document serves not only to explain **what** the standards require but also **why** they are appropriate. A rationale document can also serve to provide information to the press/media that may be interested in reporting on the Tribe's standards development efforts. If there are

particular issues where the Tribe is seeking public comment, the rationale document can be used to highlight those issues. The Region can provide assistance in preparing this document (e.g., recommendations and examples developed by other Tribes and States). Topics that may be appropriate to address include:

- What is a water quality standard?
- What provisions in the Clean Water Act authorize tribal standards adoption?
- How will standards improve the Tribe's ability to protect water quality, i.e., what are the benefits of standards adoption?
- Do the draft standards differ from the those of adjacent States/Tribes, and if so, why?
- How will the standards be used in addressing point sources of pollution?
- How will the standards be used to address nonpoint sources of pollution?
- Do the water quality criteria differ from those recommended by EPA, and if so, why?

### **3) Use local newspapers/radio to provide information on the draft standards.**

Newspapers or radio can be used to announce the Tribe's intent to establish water quality standards, summarize the approach that is being followed, and provide a contact for more information. There may even be a discount government rate. Although the legal notice section of the newspaper can be used, most people do not read the legal notice section, and it may be more effective to buy advertising space.

### **4) Offer to meet individually with interested parties to discuss key issues.**

Where comments are submitted on the draft standards, it may be useful for the tribal program staff to meet with the commenting party to discuss their comments and any concerns. This practice can help to build support for the tribal standards and minimize the potential for conflict at the implementation stage. Although there are no record keeping requirements, the Region recommends that the results of such meetings be documented so that the tribal program has a record of the issues that were discussed. At a minimum, the Region recommends that the tribal program request a meeting with staff of the appropriate U.S. Fish and Wildlife Service (FWS) field office because of the FWS's expertise, resources and authority to ensure the protection of threatened and endangered species on the reservation. These discussions may provide an early opportunity to identify and resolve any endangered species protection issues that might otherwise not be discussed until after the Tribe adopts its standards, i.e., during the FWS-EPA consultation process that must be completed prior to EPA approval of the tribal standards.

### **5) Hold a public meeting to discuss the draft WQS.**

Where multiple sets of comments and particularly where numerous comments of a similar nature are received, it may be useful to organize an informal public meeting to answer questions and discuss the draft water quality standards. Such a meeting provides an opportunity for all interested parties to discuss their comments in an informal setting, and may lead to a productive exchange of ideas. Consistent with federal public participation requirements, the Region recommends that such meetings be well noticed at least 30 days in advance, open to anyone wishing to attend, and held at times and places that are convenient for the public.

## **6) Organize a workgroup to review alternative approaches to difficult issues.**

For especially difficult issues, the Tribe may decide that is worthwhile to organize a workgroup of interested parties to review alternatives and develop a recommended approach. Clearly defining the purpose of the workgroup and the specific objectives and tasks can lead to a more efficient and useful process. This approach can be an effective means for tribal programs to access technical expertise available from federal agencies, State agencies, industries, universities, and other organizations or individuals.

## **7) Satisfy the public participation requirements in the WQS regulation.**

Once some combination of the six optional public outreach activities described above are completed, and appropriate changes have been made to the draft standards, the tribal program should then initiate the administrative process of adopting the water quality standards. The Tribe's adoption process must be consistent with the public participation requirements found in EPA's water quality standards regulation (see 40 CFR 131.20(b)). These requirements are to: (1) hold a public hearing and (2) make the proposed water quality standards and supporting analyses available to the public prior to the hearing. The public hearing must be conducted in accordance with the requirements found in EPA's public participation regulation, as discussed below. Where the Tribe has established differing public participation requirements under tribal law (such as those that may be included in a tribal Administrative Procedures Act), then the more stringent requirement should be implemented. For example, where the federal requirement is to provide notice at least 45 days prior to the hearing, and the tribal practice is to provide 30 days notice, then notice should be provided to the public at least 45 days prior to the hearing.

## **8) Satisfy the Requirements in EPA's Public Participation Regulation.**

Requirements applicable to water quality standards public hearings are found in EPA's public participation regulation (40 CFR Part 25). The discussion below provides recommendations to assist Tribes in satisfying these federal requirements. Prior to scheduling and conducting a water quality standards public hearing, Tribes are advised to review the provisions found at 40 CFR Part 25, particularly the requirements found in Part 25.5 (public hearings) and 25.8 (responsiveness summaries). The Region is interested in attending tribal public hearings, at a minimum, to deliver EPA's comments on the proposed tribal water quality standards. Regional staff are also available to assist in other ways (e.g., provide a brief presentation on the federal requirements affecting tribal participation in the water quality standards program).

Public notice. A notice of each hearing must be publicized in an appropriate manner, such as in one or more local newspapers, and also distributed to a mailing list of interested and affected parties at least 45 days prior to the date of the public hearing. Since most people do not read the legal notice section of the newspaper, the tribal program should consider purchasing newspaper advertising space or pursuing other means of providing notice (e.g., use of fliers or posters). The notice should be written in a way that will encourage the public to review the proposed standards and provide comments. The Region recommends that, at a minimum, the notice include:

- a brief description of the action to be taken by the Tribe, e.g., adoption of water quality standards under the Clean Water Act applicable to surface waters within reservation borders,
- the date, time, and location of the public hearing,
- notification that comments can be provided in writing and that attendance at the hearing is not required,

- a date by which written comments should be submitted,
- notification that it may be necessary to limit the duration of oral comments in order to ensure maximize participation and allotment of adequate time for all speakers,
- a name and phone number to call to receive a copy of the proposed water quality standards and the supporting analyses.

The Tribe may optionally specify in the notice that, for those requesting a copy of the proposed standards and supporting analyses, a reasonable fee will be charged to cover document duplication expenses. In deciding whether to charge a fee, the Tribe should weigh the likely expense of providing copies of requested documents against the potential discouraging effect that a fee may have on the public's willingness to review the proposed standards. Where a fee will not be charged, it may save time and effort to distribute, to the Tribe's mailing list, copies of the notice and the proposed water quality standards, rather than requiring interested parties to request a copy of the standards. Note that in cases where the Tribe has conducted prior public outreach activities, the Tribe should already have a mailing list of potentially interested or affected parties.

Supporting analyses. Any reports, documents, or data (supporting analyses) that help to explain the proposed water quality standards must be made available to the public at least 30 days before the hearing. The availability of the supporting analyses needs to be mentioned in the public notice. At a minimum, the Region recommends that a rationale document (as described in item # 2 above) be prepared and made available. A rationale document allows the Tribe to explain the basis for the proposed standards and address implementation issues. Many commenters may be interested primarily in how the standards may affect them. A rationale document provides a valuable initial opportunity to address those types of concerns. Any tribal reports summarizing the findings of the tribal water quality monitoring program (e.g., Nonpoint Source Assessment Reports) should also be made available. To save time and paper, an itemized list of documents can be included in the notice so that the public can request particular items of interest. A library, community center, or other convenient location can also be used to make the supporting analyses available to the public.

Location and time of hearing. Hearings must be held at times and places which are convenient to those wishing to attend. Decisions regarding location and scheduling of hearings should consider the size of the reservation and the level of public interest. The Region believes that a single public hearing should be adequate for most tribal water quality standards actions. Public hearings should be scheduled to allow the members of the Tribal Council or other tribal decision-makers to attend.

Scheduling speakers. The Region recommends use of a sign-up sheet at public hearings. Attendees should be asked to write their name and affiliation on the sign-up sheet and indicate whether they wish to speak. This will assist the hearing officer to determine the sequence of speakers and a reasonable limitation on the time allowed for each speaker. In some cases where a large number of speakers are expected, it may be useful to schedule speakers in advance. In these cases some time should be reserved for unscheduled speakers.

Conduct of hearing. The Region recommends appointment of a hearing officer to call speakers and ensure that adequate time is provided to all speakers. The hearing officer should be a representative of the Tribe. It may be useful to begin the hearing by allowing a tribal water quality program representative to present a brief overview of the proposed water quality standards to be adopted, the process that was followed in developing the proposed standards, and any issues where public input is specifically being requested. Hearing attendees wishing to speak should then be allowed to speak in an appropriate sequence (e.g., the order in which

they are listed on the sign-up sheet), consistent with any time limitations that have been set by the hearing officer. Once all speakers have provided comments, and if there is available time, the hearing officer should allow additional comments. The purpose of a public hearing is simply to provide the public with an opportunity to comment on the proposed water quality standards. It is not necessary for the tribal program or tribal officials to respond immediately to public comments delivered at the hearing. Such responses can be developed later, after carefully considering all information, and included in the responsiveness summary. However, it may be useful to respond to some comments in order to correct misconceptions, request clarification of comments provided by the public, or provide factual information in response to easily-addressed questions. All speakers should be made to feel welcome in order to encourage future participation in water quality standards public hearings.

Record. A complete record of the public hearing must be prepared and preserved for those wishing to review it in the future. The record can be either a written transcript (e.g., prepared by a court reporter), tape recording, video recording, or a combination. The Region notes that a written transcript simplifies the job of preparing a responsiveness summary, particularly when there is a considerable amount of oral comments. Copies of the record should be provided at no more than cost to anyone who requests it.

Responsiveness summary. Following the public hearing, a responsiveness summary must be prepared. A responsiveness summary identifies the matters on which the public was consulted (the proposed water quality standards) and responds to the specific issues raised in comments provided at the public hearing or submitted in writing during the comment period. Consolidating and summarizing similar public comments can simplify the task of preparing a responsiveness summary, particularly where multiple sets of similar comments are received. Responses to all public comments, along with a summary of the comment, should be documented. Where a comment does not result in a change to the water quality standards, the responsiveness summary should document the Tribe's reasons for not making a change. Where a change is made, the responsiveness summary should describe the changes to the water quality standards. Copies of the responsiveness summary should be distributed to the Tribe's mailing list and otherwise made available to the public. The Region also needs to receive a copy of the responsiveness summary (e.g., when the adopted water quality standards are submitted for approval) to assist the Region in determining that federal public participation requirements have been satisfied.

## CONCLUSION

I hope this letter will be useful to tribal water quality programs seeking to develop and adopt an initial set of water quality standards. As indicated above, there are certain minimum public participation requirements associated with adoption of tribal water quality standards. These requirements address the need to provide adequate notice, hold a public hearing, make the proposed water quality standards and supporting analyses available to the public prior to the hearing, and prepare a responsiveness summary. However, the Region recommends that Tribes consider going beyond the minimums to further encourage public support of *both* tribal water quality standards and protection of tribal water resources.

Optional activities that can build such public support include:

- encouraging public review of the draft standards prior to initiation of the formal adoption process,
- distributing a rationale document that explains the basis for the draft standards and answers anticipated questions,

- using newspapers and radio to inform the public about the standards being developed,
- offering to meet one-on-one with interested parties to discuss their comments,
- holding an informal public meeting to discuss the draft standards, and
- organizing a workgroup to develop recommendations on difficult issues.

The Region recognizes that implementing all of these recommendations may be a significant workload for the tribal water quality staff, and that on some reservations a streamlined public outreach effort may be highly effective. However, the Region strongly recommends some combination of activities beyond the minimum requirements in order to encourage public support for the tribal program. Our experience suggests that an up-front effort to educate and involve the public can produce benefits that, in the long-term, are well worth the initial investment of additional resources. The Regional staff will make every effort to provide assistance where you think our involvement is appropriate. For example, the Region is available to make specific recommendations and provide examples of, and information about, successful Tribal and State public participation efforts.

If you have any questions, please call Bill Wuerthele, Regional Water Quality Standards Coordinator, at (303) 312-6943, Bob Erickson at (303) 312-7027, or David Moon at (303) 312-6833.

Sincerely,

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